

State of Utah

Title and Escrow Commission Meeting

Meeting Information

Date **December 14, 2005** Time **9:30 to 4:30 PM** Place **Insurance Dept., Rm 5112**

Members

(Attendees = x)

Commission Members

xChairman, Joyce W. Clark, *Washington* xDarwin L. Johnson, *Wasatch*
xDavid M. Lattin, Salt Lake xGlen W. Roberts, *Utah* xR. Curt Webb, *Cache*

Department Staff

xJohn E. "Mickey" Braun, Jr. <i>Ass't Commissioner</i>	xPerri Babalis <i>AG Legal Counsel</i>	xBrad Tibbitts <i>Director, P&C</i>	xGerri Jones <i>MC Examiner</i>
xSheila Curtis <i>MC Examiner</i>	xGale Lemmon <i>AG Prosecutor</i>	xJilene Whitby <i>PIO/Recorder</i>	

Minutes

Welcome and Introductions – Chairman, Joyce Clark

At 9:30a.m. Joyce welcomed everyone and had the visitors introduce themselves. They were Mark Gonzalez, Greg Clark ULTA Pres., Pete Stevens and Doug LeDoux.

Adoption of Minutes of Previous Meeting

Darwin **moved** to accept the minutes and Curt seconded the motion.

Old Business

- **Review & Concur with Licensee Report**

Mickey distributed and reviewed the list of individual and agency renewals for November. Curt **moved** to concur with the report. Darwin seconded the motion and the vote was unanimous.

- **Review & Concur with Enforcement Case Report**

Gale provided the Commission with a list of enforcement cases the department is working on.

- ❑ Michelle Crofts: Violation: Filed a false report with the commissioner. Penalty: \$750 forfeiture, 24-month probation and required to complete CLE requirements.
- ❑ Utah First Title Insurance Agency, Inc: Violation: Acting without a license. Penalty: \$5,000 forfeiture, 12-month probation.
- ❑ Premier Title and Escrow Insurance Agency Services, Inc: Violation: Failure to obey order of the commissioner. Penalty: \$1,000 forfeiture, 24-month probation.
- ❑ Darwin made the **motion** to concur with the proposed penalties and David seconded the motion. The vote was unanimous.
- ❑ Spencer Ball & Assoc. Violation: Failed to obey an order of the commissioner. Penalty: \$500 forfeiture. Curt made the **motion** to concur and Glen seconded it. The vote was unanimous.

- **Action Items from November Meeting:**

- ❑ **Moderator Selected for Panel Discussion?** / Joyce Clark

Greg Clark suggested the Commission talk about the scope of their duties, how it relates to the industry and how the industry can interact with the Commission. Curt suggested starting with the department's power point presentation for 20 minutes, summarize what the Commission has done to-date then respond to questions. The panel discussion needs to be outlined and submitted to Michael Covington for CE credit. Questions from the audience can be written or verbal. Answers will be limited to three minutes. Glen suggested Joyce

be the moderator. She accepted. Glen reminded the Commission that ULTA members need to send in their registration and pay for their spouse and room. The hotel is the Renaissance.

- ❑ **Can Test Questions be Reviewed and Changed in More Timely Manner?** / Mickey
Mickey talked with the vendor. Changes made in July won't go into effect until January. Curt said that many miss passing the test by one or two questions. They may be based on answers based on newly changed laws. Curt asked if wrong or old questions could be pulled? Mickey will check
- ❑ **How Soon are Test Question Changes Made in the Title Test after July?** / Mickey
Changes made in July won't go into effect until the following January.
- ❑ **Can Missed Questions be Reviewed After Taking a Test?** / Mickey Braun
The vendor will see if this can be done. Should have answer by the February meeting. Gerri asked Mickey to see about pulling questions about wills and probate.
- ❑ **Ask Neal and Commissioner Michie to contact Senator Tom Hatch Regarding Title Legislation?** / Brad Tibbitts
Tom Hatch does not want to run a separate bill. The department has added it to their Producer bill. The proposed wording requires a title and escrow licensee to have a total of three years experience. Subsection 31A-23a-111(5)(b)(i) applies to agencies and agents. Gail said we could revoke a license if an agency fired a licensee after the agency received their escrow and title license. Pete said the intent of the law is to always have qualified people. This law only applies to new agencies. Established agencies are grandfathered in. Legislative Research said there could be a constitutional issue when agencies are treated differently. Once the bill is ready it will be put on the web and sent to Commission members. Senator Mansell pulled the new and old language from the bill last year because, as he stated to Senator Hatch, he "couldn't live with it."
- **Article Written for ULTA's Newsletter?** / Glen Roberts
Glen said he is working on it.
- **R592-5, Fiduciary and Other Responsibilities of Title Insurance Producers Providing Escrow Services as Settlement Agents** / Brad Tibbitts
Once the changes from the last meeting have been added to the rule it will be brought back to the Commission to review.
- **Review Revised Rule Draft of R592-4, Standards for Title Escrow Charges / with Matrix and Escrow Cost Analysis** / Brad Tibbitts
This rule was changed and approved for the rulemaking process. It will be filed once the others are ready to go.

New Business

- **Insurance Closing Letters** / John Bartlett
 - ❑ Joyce had copy of the letter from Paul Newton for Commission members regarding closing letters. Many lenders require underwriters to stand behind their agent's, even when they make mistakes. Many think there should be a charge for the closing protection letters (CPL). Greg noted that the letter also addresses embezzlement issues. A proposal was made to have the Commission hold the funds. Glen did not like the idea of charging for this letter. The underwriter is on the hook if a claim results, which constitutes insurance. Gale referred to 31A-23a-407 that holds the title insurer liable for acts of their agents.
 - ❑ David asked what other states did? Pete said Florida and one other state have a similar defalcation statute. Other states are silent but they don't operate like Utah.
 - ❑ Glen thought this should not be done by rule but in the form of a filing. Gale agreed. Joyce asked Perri if this is within the Commission's Scope? She did not know but would research it. Curt moved to table the issue until the Commission could review it further. Glen seconded the motion and the vote was unanimous.

- ❑ Paul Newton said the reason for drafting letter was to encourage collecting money at the closing to set aside for escrow losses. The state has been unsuccessful in collecting from underwriter to pay for losses. He did not know who would administer the account. Pennsylvania, New Jersey and Colorado have the CPL and an account. Pete said that if you are going to do it, do it for everyone. Curt said it would be on January's agenda. Mark Day said the CPL is already covered statutorily. We would be charging consumers to insure that their agents comply with a written contract. Jon wondered if questions could be gathered for the next meeting and he will write responses.
- **ULTA's View of Fiduciary Rule (10:30 till Noon)**
 - ❑ Member of the ULTA Board introduced themselves to the group. Joyce said that during Curt's presentation at the last meeting they became aware of many questions that need to be discussed regarding this rule. This discussion is just to decide where we want to go with it.
 - ❑ Curt then provided a presentation and discussion of the market with paid or split closings and something in between. Split closings can't be done without problems and without a recorder.
 - What drove it to split closings? Greed. Once we started doing buyer agency it began. Contracts then became silent as to the title company. The buyer no longer had to go where the seller required.
 - Who benefits? The seller. More established agents work with the sellers and make the decisions. New agents work with the buyers. The current market place would have to change markedly if it went back to the way it was.
 - The fiduciary issue deals with the closing, not the title insurance. If we separate the buyer and the seller then both have a choice. Realtors don't want to go back to the way it was originally. California has a contract that allows both the buyer and the seller to agree on where the closing will be. If it is a single closing then the person with the most money will determine that. This will empower lenders to determine where the closing will be.
 - Liability issues are huge because of splits. Every time you do a closing for a buyer you are in violation of the CPL because you are sending your money to another company. Pete said that more than one fiduciary creates a liability problem. Gale said that under the split-closing scenario it is impossible to have a proper fiduciary (Gale). Perri disagreed. Gerri said that agents lose money every time they do a split closing. Funds in an account or pool are already protected by statute without the CPL.
 - What constitutes a closing? Is signing a part of the closing? If the closing does not include signing then it does not matter how the papers are mailed out.
 - Both the buyer and the seller can have a title company and only the buyer's company will take care of the closing. Choice happens before it gets to the lender. The UAR needs to approve this. We must designate a single fiduciary and structure the law to do this. A rule needs to require that the industry abide by this model. This model will allow the consumer to have the choice. All present agreed that this was good. The appearance of the market will not change with this model.
 - Pete said that National CPLs were limited by underwriters. If we limit them we will be in conflict with the national standard.
 - ULTA would like a draft of the fiduciary rule once the Commission approves it.
 - ❑ Glen moved to have the department draft the fiduciary rule to include those things discussed today. Darwin seconded it and the vote was unanimous.
- **R592-6 (R590-136), Title Insurance Agents Annual Reports / Brad Tibbitts**

Other Business from Committee Members

- Glen asked if they could get a copy of the fiduciary rule a few days before the next meeting?

- Four rules need to go through the rulemaking process. Two are procedural rules and do not need hearings. Curt felt that the matrix still needed work. Curt **moved** that the 2nd and 3rd rules go through the rulemaking process. Glen seconded the motion. The vote was unanimous.
- **Curt will get in touch with Chris Tyler.**
- David asked if the splitting costs should have a specific rate? Should it be negotiated or established? Gale said this could be problematic since it may not always be a title company. Costs are also different from time to time. Darwin would like to see a set price.

Adjourned: At 12:28 p.m. Glen made the **motion** to adjourn. The vote was unanimous in favor of the motion.

Next Meeting

9:30 a.m., Room 3112, State Office Building

January 11, 2006	July 12, 2006
February 8, 2006	August 9, 2006
March 8, 2006	September 13, 2006
April 12, 2006	October 11, 2006
May 10, 2006	November 8, 2006
June 14, 2006	December 13, 2006